

IC 31-19-10

Chapter 10. Withdrawal of Consent to Adoption; Contest of Adoption

IC 31-19-10-0.5

Standard of proof

Sec. 0.5. The party bearing the burden of proof in a proceeding under this chapter must prove the party's case by clear and convincing evidence.

As added by P.L.130-2005, SEC.6.

IC 31-19-10-1

Persons permitted to contest adoption; time for filing motion to contest

Sec. 1. (a) Except as provided in subsection (c), only a person entitled to notice of adoption under IC 31-19-4 or IC 31-19-4.5 may contest an adoption.

(b) A person contesting an adoption must file a motion to contest the adoption with the court not later than thirty (30) days after service of notice of the pending adoption.

(c) A person seeking to withdraw consent to an adoption must file a motion to withdraw consent to the adoption with the court.

As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.20; P.L.61-2003, SEC.15.

IC 31-19-10-1.2

Contested adoption; burden of proof

Sec. 1.2. (a) If a petition for adoption alleges that a parent's consent to adoption is unnecessary under:

- (1) IC 31-19-9-8(a)(1); or
- (2) IC 31-19-9-8(a)(2);

and the parent files a motion to contest the adoption under section 1 of this chapter, a petitioner for adoption has the burden of proving that the parent's consent to the adoption is unnecessary under IC 31-19-9-8.

(b) If a petition for adoption alleges that a parent's consent to adoption is unnecessary under:

- (1) IC 31-19-9-8(a)(4)(B); or
- (2) IC 31-19-9-8(a)(4)(C);

and the parent files a motion to contest the adoption under section 1 of this chapter, the parent has the burden of proving that the child was not conceived under circumstances that would cause the parent's consent to be unnecessary under IC 31-19-9-8(a)(4). The absence of a criminal prosecution and conviction is insufficient to satisfy the burden of proof.

(c) If a petition for adoption alleges that a parent's consent to adoption is unnecessary under IC 31-19-9-8(a)(9) and the parent files a motion to contest the adoption under section 1 of this chapter, a petitioner for adoption has the burden of proving that the parent's consent to the adoption is unnecessary under IC 31-19-9-8(a)(9).

(d) If a petition for adoption alleges that a legal guardian or lawful custodian's consent to adoption is unnecessary under IC 31-19-9-8(a)(10) and the legal guardian or lawful custodian files a motion to contest the adoption under section 1 of this chapter, the legal guardian or lawful custodian has the burden of proving that the withholding of the consent to adoption is in the best interests of the person sought to be adopted.

(e) If a petition for adoption alleges that a parent's consent to adoption is unnecessary under IC 31-19-9-8(a)(11) and the parent files a motion to contest the adoption under section 1 of this chapter, a petitioner for adoption has the burden of proving that the requirements of IC 31-19-9-8(a)(11) are satisfied and that the best interests of the child are served if the court dispenses with the parent's consent to adoption.

(f) If a petition for adoption alleges that a parent's consent to adoption is unnecessary under:

- (1) IC 31-19-9-9; or
- (2) IC 31-19-9-10;

and the parent files a motion to contest the adoption under section 1 of this chapter, a petitioner has the burden of proving that the requirements of IC 31-19-9-9 or IC 31-19-9-10, respectively, are satisfied and that the best interests of the child are served if the court dispenses with the parent's consent to adoption.

(g) If a court finds that the person who filed the motion to contest the adoption is failing to prosecute the motion without undue delay, the court shall dismiss the motion to contest with prejudice, and the person's consent to the adoption shall be irrevocably implied.

As added by P.L.61-2003, SEC.16.

IC 31-19-10-1.4

Basis for resolving contested adoption

Sec. 1.4. A court, in making a determination under section 1.2(e) of this chapter, shall consider all relevant evidence, but may not base its determination solely on a finding that a:

- (1) petitioner for adoption would be a better parent for a child than the parent who filed the motion to contest the adoption; or
- (2) parent has a biological link to the child sought to be adopted.

As added by P.L.61-2003, SEC.17.

IC 31-19-10-2

Notice of intent to withdraw consent or to contest adoption

Sec. 2. A person seeking to withdraw consent to an adoption under section 3 of this chapter or contesting an adoption must give notice of intent to withdraw consent to or contest the adoption to the following persons:

- (1) All parties to the adoption.
- (2) A person whose consent to adoption is required by IC 31-19-9.

As added by P.L.1-1997, SEC.11.

IC 31-19-10-3

Withdrawal of consent to adoption

Sec. 3. (a) A consent to adoption may be withdrawn not later than thirty (30) days after consent to adoption is signed if:

- (1) the court finds, after notice and opportunity to be heard afforded to the petitioner for adoption, that the person seeking the withdrawal is acting in the best interest of the person sought to be adopted; and
- (2) the court orders the withdrawal.

(b) A consent to adoption may not be withdrawn after:

- (1) thirty (30) days after the consent to adoption is signed;
- (2) the person who signs the consent to adoption appears, in person or by telephonic communications or video conferencing, before a court in which the petition for adoption has been or will be filed and acknowledges that the person:
 - (A) understood the consequences of the signing of the consent to adoption;
 - (B) freely and voluntarily signed the consent to adoption; and
 - (C) believes that adoption is in the best interests of the person to be adopted; or
- (3) the person who signs the consent to adoption appears, in person or by telephonic communications or video conferencing, before a court of competent jurisdiction if the parent is outside of Indiana and acknowledges that the person:
 - (A) understood the consequences of the signing of the consent to adoption;
 - (B) freely and voluntarily signed the consent to adoption; and
 - (C) believes that adoption is in the best interests of the person to be adopted;

whichever occurs first.

(c) If a hearing under this section is conducted by telephonic communication or video conferencing, the court shall ensure that the hearing is recorded.

As added by P.L.1-1997, SEC.11. Amended by P.L.61-2003, SEC.18; P.L.146-2007, SEC.11.

IC 31-19-10-4

Limitation on withdrawing consent

Sec. 4. A consent to adoption may be withdrawn only as provided in this chapter and may not be withdrawn after the entry of the adoption decree.

As added by P.L.1-1997, SEC.11. Amended by P.L.58-2009, SEC.23.

IC 31-19-10-4.5

Contest of adoption by putative father

Sec. 4.5. The putative father of a child who is served with notice under IC 31-19-4 and wishes to contest the adoption must do so in accordance with this chapter.

As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.21; P.L.61-2003, SEC.19.

IC 31-19-10-5

Hearing to contest adoption

Sec. 5. Whenever a motion to contest an adoption is filed, the court shall, before entering a decree under IC 31-19-11, set the matter for a hearing to contest the adoption.

As added by P.L.1-1997, SEC.11.

IC 31-19-10-6

Determination of contest of adoption

Sec. 6. After hearing evidence at the hearing, the court shall:

(1) dismiss the petition for adoption if the court:

(A) finds that the person who filed the motion to contest the adoption has established that it is in the best interests of the child that the motion to contest the adoption be granted;

(B) finds that a required consent to adoption has not been obtained in writing or has not been implied under IC 31-19-9; or

(C) permits a necessary consent to adoption to be withdrawn; or

(2) deny the motion to contest the adoption.

As added by P.L.1-1997, SEC.11.

IC 31-19-10-7

Service of notice of adoption contest; protection of privacy of adoption petitioner

Sec. 7. (a) The court may:

(1) send all notices of the filing of a motion to contest an adoption;

(2) conduct bifurcated hearings under this chapter; and

(3) issue an order protecting the anonymity of a petitioner for adoption.

(b) An order issued under subsection (a)(3) may include an order directed to an attorney who represents a party:

(1) contesting an adoption; or

(2) seeking to withdraw a consent to adoption.

An order under subdivision (1) or (2) may order the attorney not to disclose information that identifies or may tend to identify a petitioner for adoption.

As added by P.L.1-1997, SEC.11. Amended by P.L.61-2003, SEC.20.

IC 31-19-10-8

Denial of putative father's adoption contest as bar to establishing paternity

Sec. 8. A putative father is barred from establishing paternity under IC 31-14 if his motion to contest the adoption has been denied under this chapter.

As added by P.L.1-1997, SEC.11.